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OFFICE OF THE
EXECUTIVE SECRETARY

July 12, 2002

The Honorable Sara Kyle, Chairman
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37243-0505

In Re: BellSouth Telecommunications, Inc.'s Entry Into Long Distance (InterLATA)
Service in Tennessee Pursuant to section 271 of the Telecommunications Act of
1996

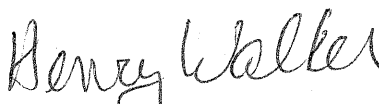
Docket No. 97-00309

Dear Chairman Kyle:

Please accept for filing the original and fourteen copies of the Testimony of Joe Gillan
filed on behalf of the Southeastern Competitive Carriers Association, Inc. in the above-captioned
proceeding.

Very truly yours,

BOULT, CUMMINGS, CONNERS & BERRY, PLC

By: 
Henry Walker

HW/nl
Attachment

**BEFORE THE
TENNESSEE REGULATORY AUTHORITY
Nashville, Tennessee**

**TESTIMONY OF JOSEPH GILLAN
ON BEHALF OF THE
SOUTHEAST COMPETITIVE CARRIERS ASSOCIATION
DOCKET 97-00309**

JULY 12, 2002

1 **Q. Please state your name, business address and occupation.**

2

3 **A. My name is Joseph Gillan. My business address is P. O. Box 541038, Orlando,**
4 Florida 32854. I am an economist with a consulting practice specializing in
5 telecommunications.

6

7 **Q. Please briefly outline your educational background and related experience.**

8

9 **A. I am a graduate of the University of Wyoming where I received B.A. and M.A.**
10 degrees in economics. From 1980 to 1985, I was on the staff of the Illinois
11 Commerce Commission where I had responsibility for the policy analysis of
12 issues created by the emergence of competition in regulated markets, in particular
13 the telecommunications industry. While at the Illinois Commission, I served on
14 the staff subcommittee for the NARUC Communications Committee and was

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1 appointed to the Research Advisory Council overseeing the National Regulatory
2 Research Institute.

3
4 In 1985, I left the Illinois Commission to join U.S. Switch, a venture firm
5 organized to develop interexchange access networks in partnership with
6 independent local telephone companies. At the end of 1986, I resigned my
7 position of Vice President-Marketing/ Strategic Planning to begin a consulting
8 practice. Over the past twenty years, I have provided testimony before more than
9 35 state commissions (including Tennessee), five state legislatures, the Commerce
10 Committee of the United States Senate, and the Federal/State Joint Board on
11 Separations Reform. I currently serve on the Advisory Council to New Mexico
12 State University's Center for Regulation.

13
14 **Q. On whose behalf are you testifying?**

15
16 **A. I am testifying on behalf of the Southeastern Competitive Carriers Association**
17 **(SECCA). SECCA is a broad coalition of carriers and their representative**
18 **associations committed to bringing the full range of competitive services to**
19 **consumers and businesses in the Southeast, including Tennessee.**

20
21 **Q. What is the purpose of your testimony?**

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1 A. The purpose of my testimony is to address two issues, each ultimately related to
2 the question of whether it is in the public interest to endorse BellSouth's
3 application for interLATA authority at this time.¹ Conditions today are far
4 different than what was anticipated when the Telecommunications Act was
5 passed. Deteriorating conditions in the competitive telecommunications industry
6 -- coupled with the incumbent LECs' unrelenting attacks on their obligations to
7 open their networks -- call for a fundamental reexamination of whether granting
8 additional 271 applications is in the public interest without, at a minimum,
9 establishing clear conditions that would prevent BellSouth from reducing any
10 wholesale obligation in the future.

11
12 In the testimony below, I critically examine the status of local competition in
13 Tennessee. In theory, the Telecommunications Act was *supposed* to provide
14 entrants the same access to the existing exchange network (through UNEs) that
15 BellSouth inherited. Yet, while the entire CLEC community in Tennessee gained
16 only 103,600 UNE-based lines since the Act's passage, BellSouth added more
17 than 1.56 million lines.² Such disparate results are hardly consistent with
18 BellSouth's claim of nondiscriminatory access.

19

¹ Specific company witnesses will address BellSouth's technical compliance with various elements of the Competitive Checklist.

² Sources: BellSouth Form 477 (UNE Lines as of December 2001) and BellSouth ARMIS 43-08, Total Access Lines in Service (2001-1995) Tennessee.

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1 Equally important, however, is that BellSouth is feverishly working to eliminate
2 the very same unbundling obligations that have created what little local
3 competition has developed.³ It is important that the Authority step back and view
4 the entirety of BellSouth's corporate behavior in order to judge whether its
5 interLATA authority is in the public interest. This is a company committed to
6 gutting its unbundling obligations and to seeking federal preemption of State
7 unbundling rules. In other words, this is a company that is working to eliminate
8 the checklist at the *same time* that it claims its compliance should be rewarded
9 with interLATA entry. It is not just "back-sliding" that should concern the
10 Authority -- BellSouth's strategy is one of "front-sliding" by working in parallel
11 to eliminate those unbundling obligations that have produced the very competition
12 that BellSouth points to as evidence that it should be granted interLATA relief.
13 What is the point of determining whether BellSouth unbundles its network *today*
14 (which is a question fundamentally addressed by other witnesses), if BellSouth's
15 overriding objective is to simply *eliminate* unbundling as soon as possible?
16

³ See Comments of BellSouth, CC Docket No. 01-338, April 8, 2002 ("BellSouth Comments").

II. The State of Local Competition in Tennessee

Q. Please summarize BellSouth's claims regarding the state of local competition in Tennessee today.

A. There are three basic entry strategies to the local market: (1) the resale of BellSouth's retail services, (2) the use of unbundled network elements (UNEs), alone and in combinations, and (3) the construction or lease of other facilities to connect directly with end-users. Accepting at face value BellSouth's testimony, Table 1 summarizes the level of competitive activity occurring using each of these entry strategies.

Table 1: CLEC Penetration Claimed by BellSouth

| Entry Strategy | BellSouth Estimate of CLEC Lines: | | | Claimed CLEC Share |
|-------------------|-----------------------------------|----------|---------|--------------------|
| | Method 1 | Method 2 | Average | |
| Resale | 40,071 | 38,906 | 39,489 | 1.3% |
| UNEs ⁴ | 105,731 | 105,362 | 105,547 | 3.5% |
| Facilities | 273,478 | 233,359 | 253,419 | 8.4% |
| Total CLEC | 419,280 | 377,627 | 398,454 | 13.2% |

There are a number of threshold points to be made concerning the BellSouth estimate summarized in Table 1 (before turning to an analysis of its accuracy, as well as its implication, for Section 271). To begin, it is useful to understand that there is no need to "estimate" the level of CLEC activity for two of the three entry

⁴ Includes UNE-P (loops with switching) and UNE-L (loops without switching).

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1 strategies because the level of CLEC activity using resale and UNEs is (or, at
2 least, should be) known with precision. Each of these strategies relies on
3 facilities/services purchased directly from BellSouth and, therefore, no
4 “estimation” should be necessary.

5
6 This observation leads to the most important point about Table 1 – that is, that
7 more than 60% of *all* CLEC activity that BellSouth claims exists in Tennessee is
8 attributed to the only form of entry -- facilities-based entry⁵ -- that BellSouth
9 cannot measure directly, but must estimate. Consequently, the accuracy of
10 BellSouth’s portrayal of CLEC activity depends largely on whether its estimates
11 of facilities-based competition are plausible.

12
13 The second most important factor affecting BellSouth’s market share estimates is,
14 quite oddly, the number of access-lines (and their equivalents) that BellSouth
15 reports for itself. For BellSouth’s estimated market shares to be valid, BellSouth
16 must not only accurately estimate the level of CLEC lines, it must properly count
17 its own facilities as well. Although arriving at an accurate count of BellSouth’s
18 lines may not seem controversial, BellSouth has excluded from its analysis any

⁵ For simplicity, I use the term “facilities-based entry” in the remainder of this testimony to refer to entry other than through resale or UNEs, including UNE loops used in combination with a CLECs own switching. Although UNEs are often considered a form of facilities-based entry, the estimation problems posed by UNEs are far different than those involving other forms of facilities-based entry.

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1 local capacity sold as a "special" access arrangement, substantially reducing its
2 relative share.

3
4 **Q. Before you turn to whether BellSouth's estimates of facilities-based**
5 **competition in Tennessee are plausible, have you analyzed the competitive**
6 **trends affecting UNE penetration and resale?**

7
8 **A.** Yes. Table 2 (below) summarizes the relative trends affecting UNE penetration
9 and resale, based on BellSouth's Form 477 Local Competition Reports filed with
10 the FCC. Because of the very different market segments addressed by loops
11 purchased with switching (UNE-P) and loops connected to CLEC-provided
12 switching ("UNE-L"), each of these forms of UNE competition is evaluated
13 separately.

14
15 **Table 2: Timeline of Competitive Development**
16 **UNEs and Resale: Tennessee⁶**
17

| Entry Strategy | Dec-99 | Jun-00 | Dec-00 | Jun-01 | Dec-01 |
|----------------|--------|--------|--------|--------|--------|
| Resale | 47,749 | 52,938 | 52,655 | 51,011 | 43,104 |
| UNE-L | 35,605 | 41,550 | 47,739 | 51,721 | 53,067 |
| UNE-P | 334 | 2,002 | 15,778 | 30,674 | 50,555 |

18
19 As Table 2 illustrates, there are very different competitive growth profiles
20 associated with each of these entry strategies. The fastest growing (by a
21 significant margin) strategy is clearly UNE-P. Table 3 clearly shows this change,

⁶ Source: BellSouth Form 477 Local Competition Reports.

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1 summarizing the growth experienced by each strategy during the first and second
2 halves of 2001:

3 **Table 3: Relative Growth During 2001**
4

| Entry Strategy | Growth During 2001 | |
|----------------|--------------------|----------|
| | Jan-June | July-Dec |
| Resale | -1,644 | -7,907 |
| UNE-L | 3,982 | 1,346 |
| UNE-P | 14,896 | 19,881 |

5
6 As Table 3 makes clear, most of the competitive growth in Tennessee during 2001
7 – and particularly in the latter half of the year – occurred via the UNE-P entry
8 strategy. This observation has particular relevance to a discussion later in this
9 testimony concerning whether BellSouth's interLATA authority is in the public
10 interest, given BellSouth's commitment to reducing its unbundling obligations to
11 curtail what little competition has emerged in Tennessee.

12
13 **Q. Do you believe that the Authority should place special emphasis on UNE**
14 **penetration in evaluating BellSouth's compliance with the competitive**
15 **checklist?**

16
17 **A.** Yes. As noted earlier, UNEs are the vehicle – or, rather, are supposed to be the
18 vehicle -- by which BellSouth makes the exchange network available to entrants
19 on terms no less favorable than that experienced by its own retail operations. If
20 nondiscriminatory access were a reality, then the Authority should expect to see
21 meaningful share gain and extensive competition. In fact, I believe that the basic

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1 intent of the Track A review process was so that commercial experience could be
2 used by the States (and this Authority) to validate an RBOC's claim of checklist
3 compliance. As explained by the Conference Committee:

4
5 The requirement [in 271(c)(1)(A)] that a BOC "is providing access
6 and interconnection" means that the competitor has implemented
7 the agreement and the competitor is operational. This [Track A]
8 requirement is important because it will assist the appropriate State
9 Authority in providing its consultation and in the explicit factual
10 determination ... that the requesting BOC has fully implemented
11 the interconnection agreement elements set out in the "checklist"
12 under new section 271(c)(2).⁷
13

14 One of the reasons that the Authority should carefully consider the level (and
15 form) of local competition in Tennessee before endorsing BellSouth's application
16 for interLATA entry is that commercial experience is the most telling indicator of
17 true checklist compliance. The goal of the Telecommunications Act was not local
18 competition *someday*, after entrants had the opportunity to duplicate the
19 incumbent's network, but competition that would occur rapidly and broadly
20 throughout a State.⁸ That goal is only now beginning to be realized through

⁷ Joint Explanatory Statement of the Committee of Conference, page 33. (emphasis added).

⁸ See Joint Explanatory Statement, page 33 (and Memorandum and Order, Federal Communications Commission Docket 97-137, August 19, 1997, footnote 169), emphasis added:

The requirement of an operational competitor is crucial because ... whatever agreement the competitor is operating under must be made generally available throughout the State. Any carrier in another part of the State could immediately take advantage of the "agreement" and be operational fairly quickly. By creating this potential for competitive alternatives to flourish rapidly throughout a State, with an absolute minimum of lengthy and contentious negotiations, once an

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1 UNEs and (as I discuss later in this testimony) BellSouth is committed to
2 eliminating that competition as soon as it can.

3
4 **Q. Have you also evaluated that level of “facilities-based” competition that**
5 **BellSouth claims is occurring in Tennessee?**

6
7 A. Yes. As I indicated earlier, more than 60% of the local competition that
8 BellSouth claims exists in Tennessee is attributed to “facilities-based” entrants.⁹
9 Because BellSouth does not have an ability to measure these facilities directly, it
10 estimates these lines served through other measures, such as E911 listings and
11 interconnection facilities.

12
13 Importantly, BellSouth ignores the most direct measure available to evaluate the
14 extent of such “facilities-based” competitors – the actual traffic using the
15 interconnection facilities between it and other CLEC networks. This measure is
16 particularly useful because it provides insight not only into the competitive
17 *penetration* achieved by “facilities-based” entrants, but it also provides insight
18 into the *types* of customers such carriers have attracted.

initial agreement is entered into, the Committee is satisfied that the “openness
and accessibility” requirements have been met

⁹ As noted, “facilities-based” entry is broadly defined to include any form of entry other than resale and UNEs, and includes lines served using facilities that are either self-provisioned, obtained from third parties, or leased from BellSouth in some other fashion (such as special access).

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1
2 **Q. Have you analyzed the pattern of traffic between BellSouth and other**
3 **interconnected CLECs?**

4
5 **A.** Yes. An evaluation of the interconnected traffic pattern in Tennessee (and across
6 the BellSouth region for that matter) demonstrates a systematic pattern of
7 asymmetric traffic exchange. Table 4 (below) summarizes the most current data
8 released by BellSouth describing the traffic volumes exchanged on the
9 interconnection facilities between it and other CLECs.

10
11 **Table 4: Traffic Pattern of Interconnected Facilities**
12 **(Tennessee)¹⁰**
13

| Time Period | CLEC Interconnection Minutes | | Percent Terminating |
|-------------|------------------------------|---------------|---------------------|
| | Originating | Terminating | |
| 1Q2001 | 300,266,020 | 3,084,790,344 | 91.1% |
| 2Q2001 | 247,996,531 | 2,929,073,321 | 92.2% |
| 3Q2001 | 195,197,116 | 3,100,932,456 | 94.1% |
| 4Q2001 | 231,697,729 ¹¹ | 3,300,843,152 | 93.4% |
| 1Q2002 | 286,476,723 | 3,630,999,043 | 92.7% |

14
15 As the above table clearly shows, the traffic exchanged between BellSouth and
16 the CLECs remains heavily influenced by the terminating traffic volumes

¹⁰ Source: Item No. 5, AT&T, SECCA (et al) First Set of Interrogatories and Supplemental Update.

¹¹ Originating CLEC minutes for this quarter had to be estimated due to the incomplete provision of data in BellSouth's data response for this quarter. Originating traffic data in the third quarter of 2001 was estimated by applying the relationship between the third and fourth quarters in 2000 to the data supplied by BellSouth for the fourth quarter of 2001.

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1 typically associated with serving ISP customers. There is no question that CLECs
2 enjoyed early marketing success serving a unique category of customer, the
3 Internet Service Provider (ISP). This unique circumstance, however, should be
4 acknowledged for what it is – a *unique* circumstance, that may well be
5 transitional, but which is not a useful measure of CLEC gains in the broader
6 market of conventional end-users.¹² A better measure of whether the
7 nondiscriminatory access required by the Telecommunications Act is being
8 achieved, however, is whether CLECs are gaining any appreciable share of the
9 conventional end-user market, which is the core of BellSouth's local monopoly.

10
11 **Q. Can interconnected minutes be used to estimate CLEC market share in a**
12 **reliable manner?**

13
14 **A.** Yes. Interconnected minutes can be used to estimate the number of conventional
15 lines (i.e., non-ISP lines) being served by CLEC switches. These conventional
16 switched-service lines can be estimated directly from the originating minutes (i.e.,
17 those minutes that originate with CLEC customers) that traverse interconnection
18 facilities by dividing the total minutes by the average usage of a conventional
19 switched-service customer.

¹² I do not intend to imply that ISP customers are not end-users as a legal issue, or that the CLEC-focus on this critical customer segment was not an important contribution to the development of the internet. My only point is that the CLECs' success with this customer segment should not be used to distort measures of the CLECs' penetration in the broader local market of conventional residential and business customers.

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1
2 Converting originating CLEC usage to an estimate of the number of conventional
3 CLEC lines is straightforward. Assuming that average CLEC customer has the
4 same minutes per line as the average BellSouth customer, it is a simple exercise to
5 estimate the number of conventional lines served by CLEC switches by dividing
6 monthly originating CLEC minutes by the average usage per line.¹³ Table 5
7 estimates the number of conventional lines served by CLEC switches in
8 Tennessee using this methodology.

9
10 **Table 5: Estimating Conventional Lines Served by CLEC Switches**
11 **(Tennessee)**
12

| Year | Originating CLEC Minutes | Average ¹⁴ Minutes/Line | Estimate of Conventional CLEC Lines |
|--------|-----------------------------|---------------------------------------|---|
| 1998 | 288,302,390 | 1,165 | 20,620 |
| 1999 | 615,329,106 | 1,314 | 39,038 |
| 2000 | 942,776,703 | 1,467 | 53,542 |
| 2001 | 975,157,396 | 1,606 | 50,597 |
| 1Q2002 | 286,476,723 | 1,606 | 59,457 |

13
14
15 It is important to place market share statistics in the appropriate context. While
16 CLECs have *been* successful attracting emerging ISP customers, this isolated (and

¹³ To the extent that the average CLEC customer has more local usage than the average BellSouth customer, this assumption will overstate the number of CLEC lines.

¹⁴ Source: ARMIS 43-04, BellSouth's State DEM volumes, less the intrastate access minutes reported in ARMIS 43-08. First quarter 2002 average usage is assumed equal to 2001 average usage.

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1 perhaps transitional) success should not be used – as BellSouth certainly does – to
2 suggest a comparable CLEC penetration of the more conventional local exchange
3 marketplace. Although BellSouth claims that CLEC switches serve between
4 285,000 (Method 2) and 325,000 (Method 1) lines,¹⁵ there simply are not the
5 traffic volumes to suggest anything near these levels for conventional services.¹⁶
6

7 **Q. Have you estimated CLEC market share in BellSouth's core market of**
8 **conventional switched services?**
9

10 **A.** Yes. As shown in Table 6, when the analysis focuses on this core market – and a
11 market into which the Telecommunications Act certainly intended to introduce
12 competition -- CLEC penetration is far less than what is claimed by BellSouth.
13

¹⁵ Total of UNE-L lines (which are presumed to connect to a CLEC switch) and other Facilities (*see* Table 1 above).

¹⁶ It is important to appreciate the estimate of "conventional-service" lines served by CLEC switches in Table 5 is not significantly higher than the reported number of stand-alone unbundled loops (i.e., provided without switching), suggesting that many unbundled loops are used to provide data services and/or meet other unique customer needs.

**Table 6: Estimated CLEC Market Share
Conventional Switched Services Market**

| Entry Strategy | Estimated CLEC Conventional Lines | CLEC Share |
|--------------------------------|--------------------------------------|------------|
| Resale | 39,489 | 1.4% |
| UNE-P | 53,182 | 1.9% |
| CLEC "On-Switch" ¹⁷ | 59,457 | 2.1% |
| Total CLEC | 152,127 | 5.5% |
| BellSouth Switched Lines | 2,617,989 | |

Q. Have you also estimated CLEC market share of the broader market, including non-conventional services?

A. Yes. If the objective of a market share analysis is to look beyond the conventional services market, however, then it is important that the analysis appropriately consider *all* of the lines provided by BellSouth as well. BellSouth's analysis does not do so – it excludes lines that BellSouth considers "special access," thereby artificially reducing the evidence of its market dominance. Even if BellSouth's entire estimate of CLEC activity is accepted without challenge – but the analysis then considers all of BellSouth's lines – BellSouth's dominance of this "total market" is not materially different than its dominance of the "conventional" market shown above (*see* Table 7 below).

¹⁷ Includes UNE-L, CLEC facilities, third-party facilities and facilities leased from BellSouth (such as special access) used to offer conventional (i.e., non-ISP) services.

Table 7: CLEC Market Share – Total Market
(Accepting BellSouth Claims)

| Entry Strategy | Estimated CLEC Total Lines | CLEC Share |
|-------------------------------------|-------------------------------|------------|
| Resale | 39,489 | 0.9% |
| UNEs | 105,547 | 2.3% |
| Facilities ¹⁸ | 253,419 | 5.5% |
| Total CLEC Lines | 398,454 | 8.7% |
| BellSouth Total Lines ¹⁹ | 4,190,879 | |

Q. What is the principal difference between BellSouth's "total lines" (as shown in Table 7) and BellSouth's "switched lines" (Table 6)?

A. The principal difference between BellSouth's "switched" line count and its "total" line count are lines that BellSouth considers "special access." The "special access line" is largely a consequence of the interLATA line-of-business restriction that BellSouth seeks to have removed in this proceeding. In simple terms, customers make two types of calls: local calls and long distance calls. Many larger customers separate these calls between two types of connections – so called "switched access lines" (for calls that BellSouth can handle), and "special access lines" (for calls that BellSouth cannot).²⁰ This distinction, however, does not fundamentally change the service the customer is receiving, it only changes which carrier (BellSouth or a long distance company) terminates the call.

¹⁸ Accepts BellSouth's estimate without challenge.

¹⁹ Source: Total Access Lines, ARMIS 43-08.

²⁰ These "special access lines" connect directly to a long distance carrier's switch.

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1
2 Significantly, CLECs typically offer integrated services that render distinctions
3 between “switched” and “special” lines irrelevant – CLEC lines are *both*
4 “switched” and “special” because they handle both local and long distance calls.
5 Consequently, even if BellSouth accurately estimated CLEC lines -- and it is
6 appropriate to weigh equally lines serving the unique ISP-market with lines used
7 to offer service to more conventional end-users – the BellSouth analysis
8 significantly inflates CLEC market share by arbitrarily excluding the lines
9 BellSouth considers “special access.”

10
11 **Q. What “bottom line” conclusion can be drawn from the market share analysis**
12 **above?**

13
14 **A.**An important goal of the Telecommunications Act was to achieve a competitive
15 local marketplace, in part so that customers could shop for “full service” packages
16 that eliminated the post-divestiture distinction between local and long distance
17 carriers. The above analysis showed not only that BellSouth continues to
18 dominate the market overall, but that its dominance is particularly acute in the
19 core market of conventional services. Moreover, competition in that market is
20 heavily dependent upon access to UNEs, in particular UNE-P. As I explain in the
21 final section of my testimony, the Commission cannot judge whether competitive
22 conditions in Tennessee today justify interLATA authority, without fully

1 understanding BellSouth's continuing efforts to eliminate these unbundling
2 obligations in order to reverse what competitive gains have been achieved.
3

4 **III. Conditioning Approval (When Earned) To Assure Competition**

5
6 **Q. Why is it so important for the Authority to carefully consider whether**
7 **BellSouth's 271 application is in the public interest?**

8
9 **A.** It is important for the Authority to do more here than merely evaluate BellSouth's
10 technical compliance with the specific checklist items contained in Section 271 of
11 the federal Telecommunications Act. The Authority should also consider
12 BellSouth's unrelenting attacks on its unbundling obligations. It makes no sense
13 to approve BellSouth's application on the basis of its compliance with a
14 competitive checklist that BellSouth is committed to having eliminated.
15

16 **Q. Why is the 271 process the appropriate point to consider BellSouth's**
17 **unbundling obligations?**

18
19 **A.** The Section 271 process is one of the few real leverage points that the Authority
20 is able to exercise over BellSouth. There is a very substantial resource imbalance
21 between the RBOCs and the competitive sector that was not anticipated at the
22 time the Act was passed. As a consequence, it is necessary that *regulators*

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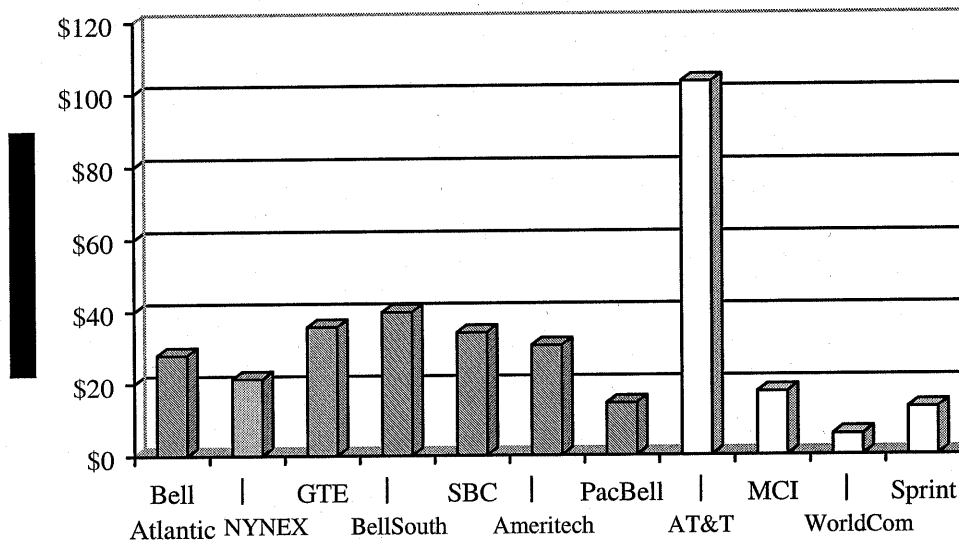
1 embrace the goal of a competitive local market, for the competitive sector does
2 not have the resources to litigate every obstacle that the incumbent imposes.

3
4 **Q. What do you mean with your reference to a “growing resource imbalance”**
5 **between incumbents and the competitive sector?**

6
7 **A.**A key assumption of the Telecommunications Act is its assumption that
8 competitive entrants would be able to negotiate reasonable wholesale
9 arrangements, and rely on privately-funded arbitration wherever negotiations
10 failed. At the beginning of 1996, when the Act was passed, this may have seemed
11 a reasonable view. As illustrated below, many of the expected competitors were
12 “comparable” in size to their incumbent local rivals, and the perception that each
13 could “litigate in force” may have seemed plausible.

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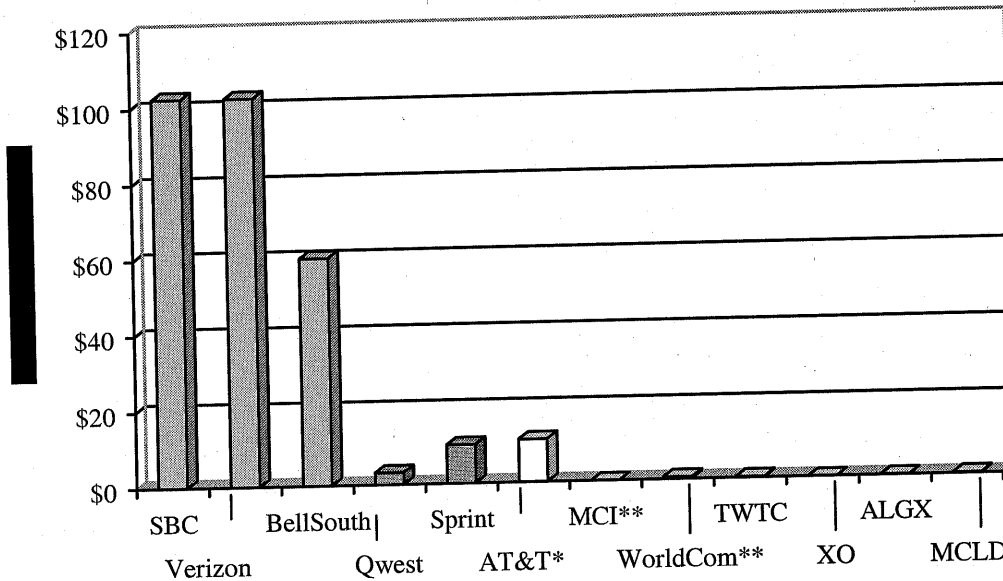
Figure 1: Relative Market Cap of ILEC and CLECs
(4th Q 1995)



Q. Have conditions changed since the Act was passed?

A. Yes. As shown in Figure 2 (below), two trends have emerged since the Act was passed. The first is that the ILECs have preferred entry-through-ILEC-acquisition, rather than competition. As a result, the ILECs have grown substantially. Second, however, the CLECs have seen their position deteriorate as investors became increasingly skeptical concerning local competition. This deterioration is not limited to an isolated few CLECs, nor is it the result of WorldCom's most recent problems. The fact is that the deterioration is sector-wide, affecting CLECs of every entry strategy, every vintage and every technology choice.

**Figure 2: Relative Market Cap of ILECs and CLECs
(June 21, 2002)**



** Based on Tracking Stock
* After adjustment for cable properties.

The comparisons in Figure 2, while dramatic in their own right, understate the size disparity between CLECs and ILECs in the current environment. This is because the CLECs in Figure 2 frequently compete in the regions of *multiple* ILECs and, as a consequence, the figure overstates their relative size (i.e., it makes them look relatively *larger*) because it fails to adjust for the ILEC's focus on relatively fewer states. In addition, the figure includes only the four *largest* CLECs – two of which are in bankruptcy – and thus does not illustrate the wide carnage in the industry, in which virtually every major CLEC has experienced serious difficulties.

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1 **Q. Is BellSouth attempting to capitalize on this resource imbalance?**

2

3 A. Yes. BellSouth (along with the other RBOCs) are attempting to eliminate the pro-
4 competitive reforms of the Telecommunications Act. At the very same time as
5 BellSouth is extolling its compliance with the competitive checklist here – and
6 touting the resulting competition as justification for its interLATA entry – it is
7 advocating that its core unbundling obligations be eliminated by the FCC, and
8 that the FCC effectively preempt States, including this Authority, from requiring
9 anything further.

10

11 **Q. What action do you recommend the Authority take?**

12

13 A. To make sure that this proceeding is nothing more than an elaborate regulatory
14 “bait and switch,” the Authority should make clear to BellSouth that each
15 wholesale obligation is a *continuing* obligation that BellSouth may not reduce
16 without the express approval of this Authority. Assuming (for the moment) that
17 (a) BellSouth is in compliance with the competitive checklist, and (b) that the
18 resulting competition makes BellSouth’s interLATA entry in the public interest,
19 then (c) the Authority should not endorse its application without be assuring that
20 such competition will continue.

21

22 Specifically, I recommend that the Authority should (at a minimum):

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1
2 * Expressly order that BellSouth may not withdraw any network
3 element (or reduce any other wholesale obligation) that it offers
4 today without first petitioning this Authority and obtaining its
5 approval;²¹ and

6
7 * Obtain BellSouth's agreement that the TRA has the authority to
8 require additional unbundling in this State and its acceptance of the
9 condition outlined above.

10
11 **Q. Please summarize your recommendation.**

12
13 A. BellSouth's application rests upon the claim that it has implemented the
14 wholesale obligations required of it under the competitive checklist, and that the
15 resulting competition demonstrates that the market is open. Significantly, this
16 analysis builds from the assumption that the competitive checklist itself provides
17 a stable base upon which competition can depend. The Tennessee Regulatory
18 Authority, and the competitors that depend upon its policies, can only be assured
19 of that assumption if the Authority takes the steps necessary to make sure that the
20 checklist cannot be weakened without its consent. Such is the purpose of the

²¹ Of course, if BellSouth's obligations expand as a result of state or federal proceedings, those expanded obligations should be made subject to this "prior approval" requirement.

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1 conditions outlined above. Absent these assurances, however, any endorsement by
2 the Authority of BellSouth's interLATA application -- even if it otherwise
3 demonstrates compliance with the competitive checklist today²² -- would not be in
4 the public interest.

5
6 **Q. Does this conclude your testimony?**

7
8 **A. Yes.**

²² As I indicated earlier, my testimony should not be interpreted to imply that BellSouth is, in fact, complying with the competitive checklist. That subject is addressed by other witnesses to this proceeding.

CERTIFICATE OF SERVICE

I hereby certify that on the 12th day of July, 2002, a copy of the foregoing document was served on the parties of record, via hand-delivery, overnight delivery or U.S. Mail, postage prepaid, addressed as follows:

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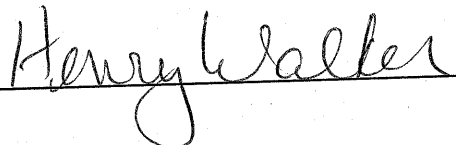
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